

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIBOR KISS,

Plaintiff,

- against -

CLINTON GREEN NORTH, LLC, and ABC
CORP., a fictitious name intending to be that
of an unknown general contractor,

Defendants.

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CLINTON GREEN NORTH, LLC,

No. 17 Civ. 10029 (LGS)

Third-Party Plaintiff,

- against -

JUDY PAINTING CORP., Z&Z
CONSTRUCTION & PAINTING, INC., and
Z&Z SERVICE INC.,

Third-Party Defendants.

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AMENDED THIRD-PARTY COMPLAINT

1. Plaintiff Tibor Kiss has filed a complaint against defendant Clinton Green North, LLC, a copy of which is annexed as **Exhibit A**. A copy of Clinton Green North, LLC's answer is attached as **Exhibit B**.

PARTIES

2. Third-party plaintiff Clinton Green North, LLC is a limited liability company the sole member of which is Dermot Clinton Green LLC. Dermot Clinton Green LLC is a limited liability company the sole member of which is AvalonBay Communities, Inc.

AvalonBay Communities, Inc. is incorporated in the State of Maryland with its principal place of business in the Commonwealth of Virginia.

3. Third-party defendant Judy Painting Corp. is incorporated in the State of New York with its principal place of business in the State of New York.

4. Third-party defendant Z&Z Construction & Painting, Inc. is incorporated in the State of New York with its principal place of business in the State of New York.

5. Third-party defendant Z&Z Service Inc. is incorporated in the State of New York with its principal place of business in the State of New York.

SUBJECT-MATTER JURISDICTION

6. The court has subject-matter jurisdiction over the third-party action under section 1367 of the Judicial Code because the third-party claims against Judy Painting Corp., Z&Z Construction & Painting, Inc., and Z&Z Service Inc. are so related to the claims in the action that it forms the same case or controversy under Article III of the United States Constitution. *See* 28 U.S.C. § 1367.

7. The court also has subject-matter jurisdiction over the third-party action under section 1332(a)(1) of the Judicial Code because the third-party action is between citizens of different states and the matter in controversy exceeds the sum or value \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a)(1).

COUNT ONE (CONTRIBUTION AND INDEMNITY)

8. The damages sought by the plaintiffs were caused by the carelessness, recklessness, negligence, or affirmative acts of omission and commission of Judy Painting Corp., Z&Z Construction & Painting, Inc., and Z&Z Service Inc.

9. Under the principles of common-law indemnity and contribution, Clinton Green North, LLC is entitled to judgment against Judy Painting Corp., Z&Z Construction & Painting, Inc., and Z&Z Service, Inc. for all sums that may be adjudged against it in favor of Tibor Kiss or, in the alternative, for such proportion of such sums as the relative culpability of the parties may warrant.

COUNT TWO (CONTRACTUAL INDEMNITY)

10. At the relevant time, Judy Painting Corp. was doing work for Clinton Green North, LLC and was working in the area in which Tibor Kiss claims to have fallen.

11. In its contract, Judy Painting Corp. agreed to indemnify Clinton Green North, LLC for claims and actions against it arising from or in any way attributable to Judy Painting Corp.'s work.

12. Tibor Kiss's fall was caused by and related to the work then being done by Judy Painting Corp.

13. Judy Painting Corp. is required, under the indemnity clause in its contract with Clinton Green North, LLC, to indemnify it from and against any damages awarded to Tibor Kiss.

CONCLUSION

Wherefore, third-party plaintiff Clinton Green North, LLC demands judgment on the first count against third-party defendants Judy Painting Corp., Z&Z Construction & Painting, Inc., and Z&Z Service Inc. for all sums that may be adjudged against defendant Clinton Green North, LLC in favor of Tibor Kiss or, in the alternative, for such proportion of such sums as the relative culpability of the parties may warrant; and also demands judgment on the second count

against Judy Painting Corp. for contractual indemnity for any and all sums as may be found due against it in favor of Tibor Kiss, together with interest, costs, and attorney's fees.

Dated: New York, New York
March 16, 2018

A handwritten signature in black ink, reading "Charles D. Cole, Jr.", positioned above a horizontal line.

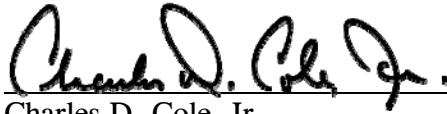
Charles D. Cole, Jr.
Newman Myers Kreines Gross Harris, P.C.
Attorneys for Defendant/Third-Party Plaintiff
Clinton Green North, LLC
40 Wall Street
New York, New York 10005-1335
212-619-4350
dcole@nmkgh.com

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2018 a copy of the amended third-party complaint of Clinton Green North, LLC was served on

Holly Ostrov Ronai, Esq.
Ronai & Ronai, LLP
Attorneys for Plaintiff Tibor Kiss
34 Adee Street
Port Chester, New York 10573,

by filing it using CM/ECF.

A handwritten signature in black ink, reading "Charles D. Cole, Jr.", is written over a horizontal line.

Charles D. Cole, Jr.
Newman Myers Kreines Gross Harris, P.C.
Attorneys for Defendant/Third-Party Plaintiff
Clinton Green North, LLC